

PROHIBITION OF HARASSMENT, SEXUAL HARASSMENT AND UNLAWFUL DISCRIMINATION

PRESCRIBED TRAINING UNDER THE
LOBBYIST REGISTRATION ACT (25 ILCS 170/4.7)

The Law's Intent & Purpose

- All persons have the right to work in an environment free from harassment, sexual harassment and unlawful discrimination.
- All lobbyists MUST REFRAIN from harassment, sexual harassment or unlawful discrimination of ANY person.
- Lobbyists must complete anti-harassment, anti-sexual harassment and anti-unlawful discrimination training or else their yearly registration or renewal is NOT deemed complete.

Required Deterrence

- Prevention and prohibition are the best tools to eliminate harassment, sexual harassment and unlawful discrimination in the workplace and working environment.
- The law and required annual training clearly communicate to lobbyists that harassment, sexual harassment and unlawful discrimination in any capacity will not be tolerated.
- The Office of the Inspector General and Executive Inspector General (OIG) will take immediate and appropriate action upon receipt of a complaint alleging harassment, sexual harassment and/or unlawful discrimination.

Definition of “Harassment”

“**Harassment**” means any unwelcome conduct on the basis of an individual’s actual or perceived:

Race,
Color,
Religion,
National Origin,
Ancestry,
Age,
Sex,
Marital Status,
Order of Protection Status,
Disability,
Military Status (or unfavorable discharge from military),
Sexual Orientation,
Pregnancy, or
Citizenship Status

—that has the purpose or effect of substantially interfering with the individual’s work performance or creating an intimidating, hostile or offensive **‘working environment.’**

Harassment at Work

As set out in the definition, **'harassment'** in the working environment includes many categories protected from **intimidating, hostile or offensive conduct**; and is in addition to the laws prohibiting 'sexual harassment.'

Further, as outlined in the governing framework of the Illinois Human Rights Act, 775 ILCS 5, this type of **harassment** broadly includes any unwelcome conduct on the basis of an individual's **'actual' or 'perceived'** status.

Example: a complaint can still be made if the accused harasser reportedly subjects an individual to unlawfully offensive conduct for being disabled—even when the victim is in fact not disabled. The alleged harasser's misperception of the reported victim as disabled does not absolve the offensive conduct.

Definition of “Sexual Harassment”

“Sexual harassment” means any unwelcome sexual advances, requests for sexual favors or any conduct of a sexual nature when:

- i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
 - ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- OR**
- iii. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Significant Provision

In the definition of harassment and sexual harassment — when reviewing the alleged creation of an *intimidating, a hostile or an offensive working environment* — the term 'working environment':

- i. Is NOT limited to a physical location, office setting or workstation where a lobbyist or an alleged victim is generally assigned to perform his or her duties; **AND**
- ii. Does NOT require an 'employment' relationship between the lobbyist and the reported victim.

Why is the Law’s Definition of “Work Environment” Important?

Because harassment can occur *outside* of the regular workplace or *outside* of normal work hours between a lobbyist and a person who does not have the same employer or career field.

Example of Harassment:

While at an office legislative hearing, a lobbyist refers to another lobbyist’s physical disability with offensive terms and derogatory labels.

Example of Sexual Harassment:

A lobbyist repeatedly attempts to kiss a legislative staffer at an evening news conference — even after the staffer has told the lobbyist to stop this behavior.

In both examples, the lobbyist may be reported because this unwelcome conduct creates a hostile work environment for the person, who is now uncomfortable with seeing the lobbyist at other work-related settings.

Quid Pro Quo Harassment

“*Quid pro quo*” (this in exchange for that) harassment includes conditions placed on a person’s career or terms of employment in return for sexual favors. This harassment includes: (i) implicit or explicit threats of employment-related adverse action if the person does not submit to the sexual favors; and (ii) promises of favorable actions if the person does submit to the sexual-related conditions of employment.

- Examples include demanding sexual favors in exchange for a promotion, award or favorable assignment; disciplining a subordinate who refuses sexual advances; and threatening to give a poor job evaluation for refusing sexual advances.
- Incidents of “quid pro quo” may also have a harassing effect on third persons if the results of sexual favoritism cause a colleague to feel unfairly deprived of recognition, advancement or career opportunities because of favoritism shown to another person engaged in an alleged inappropriate sexual relationship.

Intimidating, Hostile or Offensive Working Environment

“Intimidating, hostile or offensive working environment” occurs when individuals are subjected to offensive, unwanted and unsolicited comments or behavior. If this behavior unreasonably interferes with the victim’s work performance, **regardless** of whether the alleged harasser and the victim have the same workplace or employer, then the environment can be classified as ‘hostile’.

- An intimidating, a hostile or an offensive working environment inappropriately brings topics of sex or protected class differences into the work setting, including nonviolent behavior such as verbal, nonverbal or physical harassment.
- The following examples illustrate how the work environment can become unprofessional and disrespectful to the point of becoming sexual harassment: unsolicited flirting, use of derogatory gender-biased terms, comments about body parts, suggestive pictures, explicit jokes, repeated ogling or unwanted touching.

Sexual Harassment Includes:

“Sexual harassment” first and foremost includes all unwelcome sexual advances or requests for sexual favors; but be advised that sexual harassment ALSO may include other offensive, unwelcome verbal, nonverbal or physical harassment of a sexual nature:

- Examples of prohibited **verbal sexual harassment**, may include, but are not limited to: telling sexual jokes; using sexually explicit profanity, threats or comments; inappropriate flirting; whistling in a sexually suggestive manner; or using inappropriate terms of endearment.
- Examples of prohibited **nonverbal sexual harassment**, may include, but are not limited to: inappropriate sexual gestures, lengthy staring, blowing kisses or licking one’s lips in a sexually suggestive manner. Nonverbal sexual harassment also includes displaying or sending sexually-themed pictures or cartoons; using sexually-themed screen savers on one’s computer; or sending sexually-themed notes, letters, faxes, texts, social messaging or email.
- Examples of prohibited **physical sexual harassment**, may include, but are not limited to: non-consensual kissing, touching, patting, pinching, bumping, grabbing, rubbing, massaging, cornering, or hugging, as well as blocking a hallway, doorway or other exit.

Please Note

- Both the victim and the harasser can be either a woman or a man, and the victim and harasser can be of the same gender or gender identity.
- The harasser can be the victim's supervisor, a supervisor in another area, a co-worker OR someone who is NOT an employee of the employer, **such as a lobbyist or client.**
- Although the law may not strictly prohibit simple teasing, offhand comments or isolated incidents that are impolite, harassment is illegal when it is unwelcome, frequent or severe — such that it creates a hostile, an intimidating or an offensive work environment for the alleged victim to include *quid pro quo* conditions.

Definition of “Unlawful Discrimination”

“**Unlawful discrimination**” means to contravene the prohibitions of the Illinois Human Rights Act, 775 ILCS 5, in the illegal, disparate treatment of a person because of his or her ‘actual’ or ‘perceived’:

Race,
Color,
Religion,
National Origin,
Ancestry,
Age,
Sex,
Marital Status,
Order of Protection Status,
Disability,
Military Status (or unfavorable discharge from military service),
Sexual Orientation,
Pregnancy, or
Citizenship Status

Again, as outlined in the governing framework of the Illinois Human Rights Act, 775 ILCS 5, **unlawful discrimination** broadly includes any illegal, discriminatory conduct on the basis of an individual’s ‘actual’ or ‘perceived’ status.

“Unlawful Discrimination” at Work

Under the Illinois Human Rights Act, the declared public policy of the State of Illinois is to secure for all individuals the freedom from discrimination in connection with, among others:

- employment
- real estate transactions
- access to financial credit, and
- the availability of public accommodations

Example: a lobbying entity may not discriminate in any employment decisions by basing the personnel-related determination on an individual’s national origin or ancestry.

Additional Advisories

- Unlawful harassment or discrimination may occur even without economic injury to or discharge of the alleged victim.
- If an individual tells you that your harassing or discriminating conduct is unwelcome and to stop it, then you must STOP immediately; and even if you stop at that point, you may be subject to a complaint.
- The reporting victim or witness should use any complaint mechanism available, and intervention may be appropriate if you are a witness to this type of unsolicited, harassing/discriminating misbehavior.
- When investigating allegations of harassment or discrimination, the OIG looks at the whole record: the circumstances, such as the nature of the harassment or discrimination and the context in which the alleged incidents occurred. A review of the allegations is made from the facts on a case-by-case basis to include the incorporation of the reported victim's perception under the applicable reasonable-person standard according to the law.

No Intent Required

- Because this investigation is not a criminal inquiry, the alleged perpetrator's intent during the reported conduct does not determine the result of the investigation.
- Instead, case law dictates that the victim's perspective under the reasonable-person standard governs the review.

No Retaliation

- It is unlawful to retaliate against any individual for reporting harassment, sexual harassment and unlawful discrimination or to seek to violate the complainant's whistleblower protections.

Example: after being reported for harassment, sexual harassment or unlawful discrimination, the lobbyist asks the supervisor of the legislative staffer to place the complainant on unpaid leave effective immediately.

*This retaliatory action seeks not only to silence the staffer, but also to intimidate and impoverish the employee. Thus, the lobbyist now may be subject to additional penalties for retaliation.

Required Written Policy

- No later than January 1 of each year, each person required to be registered under the Lobbyist Registration Act shall have a written anti-sexual harassment policy.
- The policy shall include, at a minimum:
 - (i) A prohibition on sexual harassment;
 - (ii) Details on how an individual can report an allegation of sexual harassment, including options for making a confidential report to a supervisor, ethics officer, SOS Inspector General, the Department of Human Rights and the authorized agent of the registrant;
 - (iii) A prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under the State Officials and Employee Ethics Act, the Whistleblower Act, and the Illinois Human Rights Act; and
 - (iv) The consequences of a violation of the prohibition on sexual harassment and the consequences for knowingly making a false report.

*The policy must be made available to ANY individual **within two business days** upon written request (including electronic requests).

Rights of persons subjected to discrimination, harassment or sexual harassment in violation of the provisions referenced in the Lobbyist Registration Act (regardless of whether the complaint is filed by the person)

- To be notified within five business days of the Secretary of State Executive Inspector General (EIG) receiving a complaint in which the complainant is identified, to include information about complainant's rights, the EIG investigation process, and hearing procedure of the Executive Ethics Commission (EEC);
- To be notified within five business days after the EIG's decision to open or close an investigation or refer the complaint to another appropriate agency; unless the EIG reasonably determines that publicly acknowledging the existence of an investigation would interfere with the conduct of that investigation;
- To review statements and evidence given to the EIG by the complainant and the EIG's summarization of those statements and evidence, if any;
- To have a union representative, attorney, co-worker or other support person who is not involved in the investigation, at the complainant's expense, present at any interview or meeting, or hearing whether in person or by telephone or audio-visual communication;
- To submit an impact statement;
- To testify at hearings based on the allegation;
- To review, within five business days prior to public release, any portion of a summary report, after redaction made by the EEC, and offer suggestions for redaction or provide a response that shall be made public with the summary report;
- To file a complaint with the EEC for any violation of the complainant's rights by the EIG; and
- To be protected from retaliation by an employer for disclosing information to a government or law enforcement agency, in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a state or federal law, rule or regulation (Whistleblower Act, 740 ILCS 174).

Further Duties of the Lobbyist

- In addition to the required policy, the **lobbyist** must acknowledge to the OIG, as part of the annual registration, the following provisions:
 - ANY person may contact the authorized agent of the registrant to report allegations of harassment, sexual harassment or unlawful discrimination. Allegations must be investigated and penalties imposed, according to the registrant's written policy.
 - The SOS Office of the Inspector General has jurisdiction to review any allegations of harassment, sexual harassment or unlawful discrimination alleged against the registrant or lobbyists hired by the registrant.

Secretary of State OIG Review

- The OIG has authority to review allegations:
 - That the lobbyist has engaged in one or more acts of harassment, sexual harassment or unlawful discrimination.
 - That the lobbyist has engaged in retaliation against the complainant or victim of the reported harassment, sexual harassment or unlawful discrimination.
 - To submit all summarized reviews to the Attorney General and the Executive Ethics Commission.

EEC Purview

- The **Executive Ethics Commission's** duties include:
 - Authority over allegations that a lobbyist has committed an act of sexual harassment, harassment, unlawful discrimination or retaliation, as set forth in any summaries of reviews of such allegations by the OIG.
 - Conducting administrative hearings and ruling on matters brought before the commission upon the receipt of summaries of reviews by the Attorney General and OIG, regarding allegations of sexual harassment, harassment, unlawful discrimination or retaliation.
 - To make rulings, issue recommendations and impose administrative fine.

Consequences

- If found in violation of the anti-sexual harassment, anti-harassment or unlawful discrimination provisions of the State Officials and Employees Ethics Act or the Lobbyist Registration Act, the person may be:
 - Guilty of a business offense;
 - Subject to a fine of up to \$5,000 per incident; and
 - Prohibited from lobbying for the next three years.
- Penalties may also be imposed by the OIG, Department of Human Rights and EEC.
- Offender remains subject to rulings by courts of law or other applicable agencies, including, but not limited to, criminal action or civil suit as well as no-contact and protective orders.

Report Harassment, Sexual Harassment and Discrimination (*to include anonymous complaints)

- Secretary of State Inspector General's Office
(217) 785-2012 or (630) 424-2564
<http://www.reportitnow.net/>
324 W. Monroe, Springfield, IL 62704
- Department of Human Rights Hotline **1-877-236-7703**
- Authorized Agent of the lobbyist or lobbying entity

Criminal Conduct

- Harassment is NOT investigated in the same manner as conduct criminalized as 'Assault.'
- Instead, immediately report allegations of assault, sexual assault, rape or other crimes to law enforcement. These offenses are defined in the Criminal Code of 2012, 720 ILCS 5 <http://www.ilga.gov/>.
 - The OIG or your private employer does NOT have the authority to investigate or internalize this type of criminal misconduct.